

Providing Legal Assistance to Drug Users in Eastern Europe

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Introduction

Staff of the Law and Health Program, IHRD, and this consultant met with lawyers and advocates from Russia, Ukraine, Hungary, Kyrgyzstan, and Tajikistan on May 15, 2006 to discuss the legal needs of drug users in the region, what kinds of services are currently available to address those needs, what advocacy efforts are already underway, and ideas for improving access to legal services to drug users. We posed many of the same questions to individuals in a series of six meetings over the course of the next two days.

This first section of this report will detail what our meeting participants and interviewees told us about the needs of users in the region and the capabilities of existing organizations to meet those needs. The second section will provide a framework for understanding the goals and the mechanisms for providing services to drug users from a harm reduction perspective.

Limitations

The conversations we had with providers and users in the region were meant to be the beginning of a discussion about how to assist providers in the region to better address the needs of drug users. This report, based on those initial conversations, cannot be considered a comprehensive analysis of the needs of users, or the capabilities of existing organizations to meet those needs. The information we obtained was largely anecdotal, and we were unable to independently verify any of the claims about legal requirements or barriers faced by users. For example, although problems that drug users face in obtaining documentation, and the problems that they encounter as a result of not having sufficient documentation, seemed to be of paramount importance to advocates and drug users, we were unable to gain a sufficient understanding about regional laws and practices, and how organizations that may be applying for funding will be able to affect systemic change.

In addition to these limitations, language barriers posed an additional problem. The translators that we worked with were not well versed in the terminology of legal services, harm reduction, or the criminal justice system in the region. As a result, there are significant gaps in what we know about how laws and policies in the region affect drug users' access to legal representation, medical care, and drug treatment services.

I. Needs and Capabilities Assessment

A. Identification of Needs

Participants identified two levels of need: (1) legal support for harm reduction programs, and (2) legal services for clients of harm reduction programs. They agreed that the most effective legal services for drug users are attached to service NGOs, particularly harm

reduction programs, because they have easy access to drug users and they are trusted. As one advocate explained, harm reduction programs are already providing legal and social assistance and case management, legal support can be easily incorporated into these services.

When asked about their needs, providers and advocates identified first their strengths: a healthy cadre of professional lawyers and a good system of cooperation between human rights defenders and professional lawyers. However, they noted that the lawyers already working in the field were underpaid and overworked, and they lack training in providing the kinds of services drug users are asking for. They also noted that they may not have the skills to organize themselves to be able to better serve the community.

The legal needs of drug users were, not surprisingly, broad and varied, as they are in other parts of the world, and can be grouped into three categories: (1) issues related to criminal prosecutions and law enforcement; (2) issues relating to medical care and drug treatment; and (3) issues relating to access to other benefits of civil society. Participants also mentioned the legal needs of harm reduction programs themselves, including defense of staff prosecuted for engaging in prohibited activities, and advocacy to help harm reduction programs fulfill state registration requirements.

Issues and problems identified during our meeting and in follow-up meetings with individuals include:

Criminal Law

- Access to lawyers
- Procedural violations in the course of prosecutions
- Failure of law enforcement to keep a record of custody
- Coercion of testimony from drug users against themselves or others
- Cost of legal defense
- Sexual abuse by police
- Extortion by patrol police
- Defense for charges other than drug possession (property crimes, crimes of violence)

Medical Care

- Inability to access medical assistance due to discrimination and/or issues of registration
- Leaving drug users in pain without assistance
- Denial of healthcare
- Coordination between providers within the healthcare system
- Quality of drug treatment
- Access to drug treatment (if a user leaves or relapses, s/he cannot access services again for a period of years)
- Medical confidentiality (especially with regard to those who have overdosed, or have reported peers that have overdosed)

Civil Disabilities/Penalties

Access to education

Forced drug testing

Child custody

Prenatal services

Forced abortion/pressured abortion because of drug use

Difficulty accessing childcare benefits

Discrimination by social service providers

Reentry Issues (drug users returning from incarceration)

Registration of drug users

B. Highlighted Issues

Discussion about most of the issues listed above was cursory, but follow-up discussions with meeting participants and individual meetings with lawyers, advocates, and drug users allowed us to explore some of these issues in more detail. What we learned during those discussions follows.

1. Registration of users

In at least some countries in the region, drug users are required to register with the state. Our interviewees told us that drug users are automatically registered as such when they are arrested in possession of drugs, when, after arrest, they test positive for drugs, or if they request subsidized drug treatment. Presumably, registration only lasts for five years, but our sources told us that records exist of someone being registered as a drug user forever. This poses problems for people when they apply for a driver's license, attempt to adopt children, apply for documentation, or seek certain types of employment. A drug user who does not want to incur the stigma of being registered with the state, then, has a very difficult time accessing publicly subsidized treatment. Advocates discussed the need for systemic as well as individual advocacy to address this issue. Some organizations have case managers that have been able to assist users in obtaining care without having to register, or overcoming civil disabilities that face registered drug users. But most of our interviewees said that eliminating the registration requirement was an important advocacy goal.

2. Re-Entry/Documentation

Drug users returning to their communities from periods of incarceration have a whole host of needs, including housing assistance, job training, and assistance obtaining medical care and drug treatment. But perhaps the biggest obstacle faced by those returning to their communities is the fact that they are released without documentation (i.e., passport, identification, national identity card). We learned from our interviewees that documentation is crucial in the region; people are required by law to have official identification. Without official documentation, people are unable to access a variety of services and they may also be prohibited from engaging in some aspects of civil society. These denials and civil disabilities vary by region, and we were unable during our cursory interviews to fully understand their scope, but some areas that are affected include: access to medical care, filing a criminal appeal, traveling over borders, obtaining

social assistance, getting married, entering into any contract, engaging in commercial activity (e.g., purchase a house, a car, or any “big ticket” item); obtaining a birth certificate for a new child, and enrolling a child in school.

We were told that in Russia in particular, procedures for obtaining documentation change frequently, and so a person incarcerated for several years may have no idea how to obtain necessary documentation when they are released. “They return to a different world,” one advocate told us. Procedures exist for inmates to obtain documentation while people are still incarcerated, but they are ineffective. Kolodets, the Russian drug user organization, has engaged in both systemic and individual advocacy to address this problem. With intensive case management, advocates have been able to assist some returning prisoners to obtain documentation. As far as systemic advocacy, advocates say that corrections officials have been open to the idea of making procedures more effective, but federal level barriers are substantial.

In Kyrgyzstan, in order to obtain documentation, a person needs to have a mailing address and prove that they have fulfilled military obligations. These requirements pose significant barriers to Kyrgystani citizens, but prove insurmountable for some drug users, whose lives are complicated by the chaos that often accompanies procuring, using, and suffering from periodic withdrawal. It may be that in Kyrgyzstan, some form of identification is issued upon release from prison, but this document expires after three months. Adilet, the legal services organization in Kyrgyzstan, has engaged in individual advocacy to assist drug users and those returning from incarceration to obtain documentation. Adilet also allows drug users to use the organization’s address as their mailing address.

Methadone is available in Kyrgyzstan, but without documentation, a drug user cannot access this form of treatment. In addition to a range of services that someone without documentation cannot access, not having documentation also puts drug users at risk of prolonged incarceration; they are also vulnerable to police misconduct. As the lawyer from Adilet explained, once someone is released from prison, law enforcement officials watch him when he gets out and before he has an established address. He can then be accused of crimes that happen between the time that he is released, and the time that he has obtained stable housing and ID.

3. Medical care in Russia

Service providers and drug users told us that in order to receive subsidized medical care (including HIV care and substance abuse treatment) in Russia, a person must be registered with the state with a particular address. People who move to Moscow for employment, for example, but do not yet have an address, cannot register, and cannot, therefore receive treatment or HIV treatment. This is particularly problematic for sex workers who migrate from villages to work in big cities. Those who are released from prison likewise face similar problems. They may be given transport money to get them back home, but instead of using that money to return home, where they rightly fear they

will be unable to find work with a criminal record, they stay in the cities near where they are released to look for work.

Service organizations in Russia engage in individual advocacy to assist drug users in obtaining medical care when they do not have sufficient documentation, but this takes intensive case management. In terms of systemic advocacy, advocates told us that the problem is with the way that the public health system is organized. HIV care and drug treatment are not integrated into primary health care, they exist in separate systems, and this compounds the problem of documentation. Presumably (and this is something that the foundation should investigate further) undocumented people can access primary health services, but specialized services require documentation. The problem affects more than just drug users and sex workers, of course; it is primarily an issue of homelessness and migration.

4. Criminal Law Issues

The issues in this category are three-fold, with advocates focusing on (i) state criminal codes which impose lengthy custodial sentences for small amounts of drugs, (ii) police misconduct, and (iii) the right to representation during criminal prosecution.

i. Drug Law Reform

Drug users in some states face custodial sentences for possessing small amounts of drugs for personal use, in some cases, the length of these sentences is wildly disproportionate to the illicit conduct. Reforming the criminal codes to shorten custodial sentences, create statutory schemes that allow judges to sentence users to treatment instead of incarceration, or lower the amount of drugs that trigger a custodial sentence has been the priority of some advocates in Russia and Georgia in particular. Because criminal codes in the former Soviet republics are relatively new, they are malleable—which is both positive and negative. Positive in that legislators are willing to entertain revisions to the criminal code, and negative in that gains of one legislative season are easily rolled back in the next.

ii. Police Misconduct

Drug users are also vulnerable to police misconduct. Police reportedly confiscate passports and other documentation when drug users are stopped and not taken into custody. We heard from a number of those that we interviewed that the police frequently plant drugs on those they know as drug users (because they are registered as users with the state, recently released from custody, or otherwise known to the police), and then either subject to extortion, or pressured into signing a confession because they are held in custody while they are in drug withdrawal.

Participants also told us that they lacked faith in evidence presented by law enforcement in criminal cases against users. Existing government services lacks professional, effective forensics, and they would like to access private services that provide forensic analysis of police evidence, but such services are often cost-prohibitive. Even if they could afford such services, however, they told us that the courts tend to distrust these assessments and think that their findings are biased in favor of the defendant.

iii. Representation

In some of the regions countries, the right to a lawyer during criminal proceedings is granted by the constitution, and there is a system of legal assistance to those who cannot afford their own attorneys (e.g., Kyrgyzstan). For those countries without such guarantees, the most pressing needs that drug users have is for representation during criminal proceedings. But even in those countries which provide some degree of legal assistance, there is a general feeling among providers and users alike that defense lawyers are either corrupt, or so underpaid and overworked that they are ineffective. “In practice, legal assistance is only a formal guarantee,” a Kyrgyzstan lawyer told us, despite the country’s constitutional requirement that legal assistance is available. “The miniscule fee that the state can pay them means that they don’t fully perform the obligations, and the lawyers sometimes don’t participate in the preliminary research period. They don’t really appear in court.”

Several of the participants told us that their organizations provide services to low-income people, including advice and counseling on legal matters, through partner legal organizations, and at least two of the lawyers present at the meeting said that they currently offer advice to IDUs and sex workers who are participating in rehabilitation.

Some of the lawyers that we interviewed were able to provide advice to drug users facing criminal prosecution, but their ability to provide representation during criminal proceedings was limited by funding and staffing constraints. Their ability to file appeals on behalf of drug users was even more limited. Where they are able to engage in individual representation, lawyers have been successful in advocating for a reduced sentence or for treatment instead of incarceration.

Non-lawyer advocates in some cases told us that they were able to provide individual advocacy on criminal matters as well, and reported some success in stopping criminal prosecution by pointing out violations of police or criminal law procedure.

5. Privacy Violations

There seems to be little regard in this region for the privacy concerns of those seeking substance abuse treatment, and no regard for those who actively disobey the criminal law. Lawyers and advocates told us about at least two incidents where television stations have broadcast images of drug users and sex workers. In both instances, legal organizations working in cooperation with a human rights group were able to stop the broadcast by threatening to sue the station. It was unclear from our discussions what provisions of Russian law would have provided a basis for such a suit, but it would be worth further discussions with lawyers and advocates to determine whether and how to create or strengthen existing privacy protections.

C. New ideas

Lawyers, advocates, and drug users had a wide variety of ideas about how to create services that do not yet exist, expand access to services that do, enhance the quality of

those services, and change laws and policies that cause harm to drug users and their families. There was widespread agreement that none of these models will work alone, only by combining several of these approaches and working in collaboration with other organizations will create an effective system of services and advocacy for drug users.

1. Networks of existing legal service providers

Service providers said that their organizations cannot afford to employ lawyers to work exclusively with them, and that while they have often been able to engage the services of a lawyer for limited periods of time, they were unaware of a wider network of lawyers that they could approach for assistance. Likewise, lawyers expressed a desire for a network so that they could share ideas, arguments, and papers. One of the first priorities in the region should be compiling a directory of resources of existing legal services, harm reduction and social service programs, private law firms, and individual lawyers who are willing to work with active and recovering drug users and sex workers.

2. Technical assistance

Lawyers said that they recognized a need for technical assistance and training on how to represent and advocate for active and recovering drug users. One lawyer suggested a “lab” or an intensive workshop for lawyers in the region led by a group of lawyers who have expertise in challenging civil disabilities, criminal representation and appeal, discrimination and privacy law. The “lab” could also help a group of lawyers and advocates develop a “legal rights initiative” for drug users

3. Helpline

Advocates mentioned that they had some success with a nationwide helpline for another social problem, and suggested that they should develop a toll-free hotline for drug users to call to request referrals and report police misconduct. The helpline number could be advertised on the Internet and on billboards and posters at bus stations and on the trains.

4. Using the media

a. Television and radio

Advocates mentioned that in Russia there was a television program designed for prisoners, although it was unclear about whether that program was still in existence. They suggested that a program for drug users would allow them to disseminate messages about disease prevention, harm reduction services, substance abuse treatment, and resources for legal assistance.

b. Online legal assistance

Some advocates said that the Internet would be a great way to get basic information to a large number of drug users who may never have contact with any assistance program. The Internet could be used to (1) spread the answers to “Frequently Asked Questions” about drug laws and policies; (2) teach users about their legal rights; (3) make a directory of resources publicly available; (3) provide an opportunity for drug users to submit questions for online consultations; and (4) spread harm reduction messages. Everyone we spoke with agreed that a growing number of drug users have access to the Internet—

certainly far more than have access to harm reduction programs and lawyers. As one advocate put it, “Drug users are a multi-layered community. We should make use of drug user networks. If one drug user has access to the Internet, he or she can share the information with a whole network.” Another important advantage with this approach is that the Internet is free from censorship, as opposed to print, TV, and radio. Advertising and technical support were two of the areas that people identified would require further discussion, but there was general agreement that focusing on developing an online resource center would be the most cost-effective way to have an immediate significant impact on a large number of users. The Kazhan Human Rights Center actually already has a “FAQ” for sex workers on its website, and a helpline for clients to call.

5. Printed Materials

Printed advice about the rights of those who have been stopped and detained by the police, and phone numbers for those who need assistance, is needed. Participants suggested palm cards and posters strategically placed in areas where drug users congregate. We were told that club owners (especially those who have had their clubs raided) have also requested printed materials that they can post in their venues and give out to their customers. Participants said that if the police find the card on a drug user, the card might serve as a deterrent to abuse.

6. Direct outreach and education

The most effective way of reaching drug users with accurate information is by meeting them where they are: a basic tenet of harm reduction, and the most traditional means of delivering services to marginalized populations. Service providers who arranged to have lawyers come into their facilities to provide advice and consultations to drug users reported that even when services were available, drug users did not come forward to access them. These providers suggested that expecting drug users to approach lawyers was a flawed strategy, and stressed that drug users should go out into the community and reach out to drug users directly.

7. Monitoring Court Proceedings

Some advocates suggested that monitoring court proceedings is an effective way to keep potentially corrupt systems in check. They suggested training people to attend criminal trials and monitor the progress of the case, thereby putting everyone involved on notice and forcing them to follow official procedures.

8. Training Law Enforcement

Some advocates mentioned that they had had a degree of success with educating and training law enforcement on infectious disease transmission (which has an impact on perceptions about needle exchange programs), the effects of different kinds of drugs, the rights of drug users, and the availability of substance use treatment. The Center for the Defense of Constitutional Rights in Georgia has done training with the Georgian police academy.

9. Impact litigation

Legal assistance provided to one drug user is labor-intensive, and one case can take six months or more. Strategic litigation on behalf of one user, or a class of users, could be a more efficient way to force government agencies to change their practices or effect wide-scale legal change. The creative litigation efforts of the Hungarian Civil Liberties Union could serve as a useful model for legal organizations in the region. In addition to actually engaging in such litigation, participants noted the importance of having an organization or a network that would undertake a media/communications strategy to publicize the outcomes of such litigation because court decisions are often not publicly available.

10. Legal Advocacy by Non-Lawyers

Some programs have been filling the gap in services by training staff who normally provide social services to conduct legal advocacy. One program had a lawyer on staff who conducted train-the-trainer workshops to teach drug users about their legal rights so that they could pass on that knowledge to their peers; another program consulted with two attorneys on criminal cases, but provided advice and counseling to participants directly.

Some organizations have had success working with drug users themselves to provide services that can be provided by non-lawyers. This approach has been successful where there has been adequate training and support of drug users. Training drug users about their rights and how to talk to their peers about legal issues is another way to maximize the reach of legal assistance information. An advocate from Kolodets described a training that their staff lawyer conducted in 2001 where several hundred users attended. They were given information about search and seizure and their right to medical care. She said that when she sees drug users who went through that training, “I see their level of information and confidence when talking to police, doctors, etc. because they know their rights. They don’t know laws, but they understand what their rights are.”

D. On challenges/barriers

Providers, advocates, and users all told us that among the challenges that they face, the fact that there are such a tremendous number of people who use drugs, spread out over such a large geographical area, poses the biggest problem. Existing harm reduction programs only reach a tiny fraction of all drug users, and so any intervention aimed at existing harm reduction program clients must be designed in a way that leverages those contacts to reach the vast majority of those without contact with programs. Other challenges to providing legal services to drug users include:

1. Mistrust and Fear

In Russia, and the other republics formerly part of the Soviet Union, there exists a general mistrust of institutions, and a lack of faith in formal complaint mechanisms. When users face abuse at the hands of the police, one advocate explained, they do not complain to the organization charged with handling police abuse cases because they fear the retribution they may face as a result of their complaint. A lawyer with the Moscow-Helsinki Group told us that even where services are available to drug users, they do not avail themselves of those services out of fear, presumably, fear of detection by state authorities.

2. Cost

The cost of providing legal services to drug users was also a significant barrier. Almost everyone we spoke with told us that NGOs cannot afford to employ attorneys, or even staff to perform intensive case management services. Some NGOs said that they were able to get one attorney to do group consultations, or limited intake with drug users for short periods of time, but were unable to meet the needs of users who needed intensive, individual representation and/or advocacy.

3. Strong State Opposition

Russian lawyers and advocates described a strong federal government body (the State Commission on Drugs/Drug Control) both incredible powerful, and with a flawed understanding of the nature of drug use and treatment. One meeting participant described the Commission as “so strong you can’t challenge it.” Others claimed that there had been “attacks on NGOs” that challenged the Commission.

4. Lack of coordination/cooperation between NGOs

Given the formidable barriers mentioned above, any effort to change policy or augment services to drug users must be done by more than one organization in collaboration with others, and this has been a primary weakness of harm reduction efforts, at least in Russia. One program that had obtained funding to do legal outreach to drug users in medical facilities attributed its limited success to its inability to gain the necessary cooperation from other NGOs in the region.

II. A philosophy for legal service provision to drug users

In addition to discussing with experts in the region about the needs of drug users and how to address them, we also engaged in a series of discussions about the goals and philosophy of providing legal services to drug users in the context of harm reduction and healthcare. We found that our experts—and even LAHI and IHRD staff and the consultant—had different ideas. To some, providing legal services to drug users simply means setting up a clinic in a place where drug users regularly go (a health clinic, a rehabilitation center, or a harm reduction center), and offering advice and referrals to attorneys who specialize in any number of practice areas. To others, it means putting in place an effective criminal defense system, or supplementing an inadequate or underfunded one. But to some in the region whose criminal codes have been revised repeatedly in the past two decades, drug users’ most pressing need is a revision of the criminal code that would eliminate custodial sentences for those in possession of small amounts of illicit substances.

A more fundamental question, however, is what we hope to accomplish by expanding access to legal services for drug users, in other words, why target drug users for this particular intervention, especially where drug users have so many other pressing needs, and legal services are a scarce resource for all of those living in poverty in the region? An initiative to fund legal services for drug users is important because (1) legal services should be available to everyone, and drug users face particularly pernicious barriers to

accessing these services; (2) access to legal services helps to improve the health outcomes for drug users, and (2) legal advocacy can reduce the harmful impact of drug laws and policies on drug users and their communities.

The two approaches to this kind of legal advocacy, *systemic advocacy*: changing laws and policies that cause harm to people who use drugs, and *individual advocacy*: providing direct legal services to drug users in individual cases, are described in more detail below.

A. Systemic advocacy focuses on two goals, which are sometimes interrelated, sometimes not: reforming drug laws (e.g., increasing the threshold for the amount of drugs that will trigger a custodial sentence) and promoting policies that advance public health and/or reduce harm (e.g, lifting restrictions on methadone prescribing and needle exchange).

Prior to meeting with our Russian colleagues, drug law reform was not on the agenda as one of the goals of the LAHI-funded project. However, it was a pressing goal of many of those we spoke with and, ultimately, because incarceration is so closely linked to injection-drug related infectious diseases (transmission, morbidity, and mortality). Fostering drug law reform that eliminates custodial sentences for low-level drug users is entirely relevant to the goals of the project and would have a profound impact on the health and safety of drug users and the public at large. As the Kyrgystani lawyer from Adilet put it, it is important to not only focus on the consequences of a criminal conviction, but also the source of the criminal conviction itself: the fact that drug possession carries a criminal sanction.

Systemic advocacy also takes a number of different forms: lobbying political decisionmakers, policy advocacy (e.g., public speaking, meeting with policymakers, publishing opinion pieces in the press, writing policy briefs), and litigation (class action lawsuits or impact litigation filed on behalf of one client but aimed at changing a policy or practice).

B. Individual advocacy has three different approaches: providing a wide range of legal services to drug users based on what they present with (a single drug user could be facing criminal charges, but also eviction from housing, and difficulty obtaining or regaining identification); providing targeted legal services to drug users who are facing a particular legal barrier based on a state policy choice (e.g., challenging, on behalf of a single drug user, a policy that bans people with certain medical conditions—in this case, addiction or HIV—from certain professions or from housing); or providing competent criminal court representation to drug users arrested for drug offenses.

Gearing legal services towards whatever clients present with, however, results in very little, if any, systemic impact, and requires a substantial amount of time from the project. Often drug users present with discrete and random issues, and a legal services project may end up spending all of it's time researching obscure law and being drawn into complicated legal situations that have nothing at all to do with discrimination against

drug users or harmful drug policy. For example, one harm reduction organization spent a good deal of its time assisting two clients: one who was accused of stealing from an employer and who, under duress, signed a confession to that effect, and another who, while in intensive care, lost his apartment and all of his belongings because someone fraudulently signed a form in his name.

CONCLUSION

Given the challenges of providing services to such a large number of drug users, and the modest amount of money that the foundation can spend to spark and enhance services and advocacy efforts, it is essential for the foundation to encourage organizations in the region to work in coalition with one another. There will never be enough funding to hire enough lawyers to provide services to all of the drug users who needed them. But existing collaborations between harm reduction organizations and human rights defenders, treatment centers and drug user organizations, and even law enforcement and corrections officials can be effective in addressing harmful and counterproductive policies.

The needs of drug users, models of advocacy and service provision, and the challenges faced by those attempting to effect change are not so different in Eastern Europe than they are in North America, Thailand, and India. Drawing on the experiences of advocates throughout the world, and sharing successful models and ideas will be key to maximizing the impact of the foundation's funding initiative.